

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2255 - SB 2188

March 17, 2020

**SUMMARY OF ORIGINAL BILL:** Defines the term "off-premises device" for purposes of the Billboard Regulation and Control Act of 1972, the Tennessee Scenic Highway System Act, and Tennessee Parkway System Act to be in accordance with federal law.

FISCAL IMPACT OF ORIGINAL BILL:

Other Fiscal Impact – Passage of this legislation will prevent a penalty against federal funding received from the Federal Highway Administration estimated to exceed \$93,100,000.

**SUMMARY OF AMENDMENT (017273):** Deletes all language after the enacting clause. Creates the "Outdoor Advertising Control Act of 2020". Makes various changes to the Billboard Regulation and Control Act of 1972.

Specifies that neither the application for an addendum nor the payment of the \$200 fee is required for an outdoor advertising device with a digital display lawfully permitted as legal conforming or legal nonconforming, erected and in operation prior this legislation. Prohibits TDOT from requiring any addendum for an outdoor advertising device with a digital display lawfully erected and in operation prior to the effective date of this legislation.

Specifies that neither the application for an addendum nor the payment of the \$200 fee is required for an outdoor advertising device authorized by valid permit from the department that was effective on September 10, 2019 and has been upgraded to a changeable message sign with a digital display between September 11, 2019 and the effective date of this legislation.

Exempts any advertising structure existing along the parkway system by and for the sole benefit of a nonprofit organization exempt from federal income tax from the payment of fees for permits or tags.

Specifies that a valid permit that was effective on September 10, 2019, shall not become invalid based on any failure to renew the permit between November 1 and December 31, 2019 and such permit shall not be subject to renewal until the renewal period occurring after the effective date of this legislation.

Authorizes the TDOT Commissioner to assess and collect from the owner who has failed to remove a non-conforming outdoor advertising device a civil penalty in the amount of \$500 for each calendar day not to exceed \$10,000. Authorizes such an owner to contest.

Stipulates that the TDOT Commissioner is given authority to promulgate and enforce only those rules as necessary to carry out this legislation within 60 days of the effective date of this legislation, rather than the authority to promulgate and enforce any and all regulations as required and necessary.

Makes various changes to the Scenic Highway System Act of 1971 and the Tennessee Parkway System Act to reflect and mirror the provisions of the Outdoor Advertising Control Act of 2020.

Specifies that should TDOT receive documentation from a federal agency that compliance with a provision of this legislation may jeopardize federal funding or grant money, TDOT is required to promulgate emergency rules to address the area of noncompliance. These emergency rules may conflict with and take precedence over statutory provisions.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

### **Decrease State Revenue - \$7,000/FY20-21/Highway Fund**

Assumptions for the bill as amended:

- Due to the 6<sup>th</sup> Circuit U.S. Court of Appeals *Thomas v. Bright* decision ruling the Tennessee Billboard Law unconstitutional, TDOT has indefinitely suspended regulatory enforcement of the Outdoor Advertising Control Program.
- Pursuant to Tenn. Code Ann. § 54-21-104(b)(3), any person that upgrades a billboard to put a digital display panel on it has to pay a \$200 fee to obtain an "addendum" to that person's existing outdoor advertising permit.
- However, as proposed in this legislation, any person who installs a digital display on an outdoor advertising device prior to the effective date of this legislation would not be required to obtain an addendum to the original outdoor advertising permit. This would include billboards that are being upgraded to digital during this interim period while TDOT has suspended administration of the Billboard Act.
- If no addendum is needed to put these digital upgrades into TDOT's permit system after the revised Billboard Act becomes effective, there will also be no fee for obtaining the addendum. Ordinarily, TDOT would to receive at least a \$70 fee to issue permits for preexisting billboards that are brought into the permit system after the billboards are brought under the control.
- It is expected that this will impact at least 100 permits.
- There will be a one-time decrease of revenue to the Highway Fund of \$7,000 (100 x \$70) in FY20-21.
- There will not be enough nonprofit organizations exempt from federal income tax applying for a permit long the parkway to result in a significant decrease in state revenue to TDOT.
- There are not a significant number of instances whereas the owner of an outdoor advertising device fails to remove a non-conforming outdoor advertising to result in a significant impact to state revenue.

- Pursuant to 23 U.S.C. § 131, federal-aid highway funds apportioned to any state which the Secretary of Transportation determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the state legislature, whichever is later, to any state which the Secretary of Transportation determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than 660 feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such state, until such time as such state shall provide for such effective control.
- This legislation specifies that should TDOT receive documentation from a federal agency that compliance with a provision of this legislation may jeopardize federal funding or grant money, then TDOT is not required to comply with such provision; provided, that TDOT complies with each provision of this legislation that does not jeopardize such federal funding or grant money, TDOT is required to promulgate emergency rules to address the area of noncompliance. Further, these emergency rules are authorized to be able to conflict with and take precedence over statutory provisions.
- This ensures that, should a section of this legislation be deemed non-compliant with federal funding standards, TDOT would not be required to comply with such a provision; therefore, there is not a significant risk to jeopardized federal funding of grants.
- Any expenditures incurred by TDOT for the promulgation of emergency rules is considered not significant and can be accommodated within existing resources.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

/jmg